



**TOWN OF WEARE**  
PLANNING BOARD  
ZONING BOARD OF ADJUSTMENT  
15 Flanders Memorial Road  
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Naomi L. Bolton  
Land Use Coordinator

**Office Hours:**  
Monday  
Tuesday  
Thursday  
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT  
MINUTES  
JUNE 3, 2004  
(Approved as amended 9/14/04)**

**PRESENT:** Tim Galvin, Chairman; Forrest Esenwine, Vice Chairman; Leon Methot; Jack Dearborn; June Purington; Alternate, Matt Pelletier; Naomi L. Bolton, Land Use Coordinator.

**GUESTS:** Jeff Morgenstern; John Esdale; Ginger Esenwine; Ed Palmer

**I. CALL TO ORDER:**

Chairman Tim Galvin called this meeting to order at 7:30 PM at the Weare Town Office Building. Chairman Galvin explained the process by which the board conducts business.

**II. PUBLIC HEARINGS:**

Case #0604 Riverview Realty Trust (Continued Hearing)  
Variance, Article 17, Section 17.1.1  
Applicant is requesting permission to permit construction of up to a 4 bedroom single family home.  
Tax Map 107-014 Branch Road (Private Road)

Jeff Morgenstern was present. This hearing was continued from the April meeting. Mr. Morgenstern has supplied the board with further detailed answers to the points or hardship. The hardship points were newly addressed as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: existing Branch Road homes are comparable to proposed construction.
2. That the granting of the variance **will not** be contrary to the public interest because: this construction can only add to the appeal and value of the neighborhood. Additionally, the upgrade of the road will serve the good of the thirty or so houses on Branch Road.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: This is zoned residential and reasonable use is to build a

- home. There are approximately 30 homes on this road already. To deny this variance prevents the residential use of which it is zoned.
- b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: Emergency access to homes is one subject of the ordinance. Access is adequate on Branch Road (private road) demonstrated in part, by the fact that there are several houses further down on this road.
  - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: This is one of the few lots on Branch Road that is large enough to otherwise be a conforming 2 acre lot. There is substantial space to build a home and not infringe on neighbor's space. In fact, since agreement to upgrade more than 1,000 feet of Branch Road has been stipulated and accepted by the petitioner as a pre-condition of approval of this application, this variance would be in the best interests of all 30 (approximately) residences located on this road, as well as the residents of Craig Road.
- 4. That by granting this variance, substantial justice **will be** done because: This residentially zoned lot would be one of several homes allowed variances on private roads in Weare.
  - 5. That the use contemplated by the petitioner as a result of obtaining this variance **will not** be contrary to the spirit of the ordinance because: The area is zoned residential and building a single family home on an accessible road is not contrary to the spirit of the ordinance. Again, the spirit of the ordinance is to: 1) address safety concerns associated with roads that are not maintained by the town; and 2) prevent uncontrolled development. Neither of those concerns is relevant to this petition, as described above.

Mr. Morgenstern stated that he has talked with a resident who is in charge of the association that maintains the road. The annual fee to join is \$75.00 per year. Mr. Morgenstern stated that he would be willing to join the association only upon approval. Mr. Morgenstern has also spoken with Carl Knapp, Public Works Director who gave him the specifications on the upgrade that would be required. Mr. Morgenstern stated that he solicited quotes for the work to be done and found that the cost to be high but would be agreeable. Mr. Morgenstern stated that a variance is for a special situation and he felt that this is not contrary to the zoning ordinance as there are already 30 homes on Branch Road.

Approving Abutters: NONE

Disapproving Abutters: Chairman Galvin read the following e-mail from abutter, William Lindsay. The following e-mail read as follows:

"My name is William Lindsay and I am the abutter to the property in question. My property is at 52 Branch Road on the downhill side of the property in question.

My primary concern with the proposed variance is for the proper precautions to be taken for drainage of the new construction area. Already lots on either side of me have been subjected to a great deal of construction activity. Particularly on the uphill side at 48 Branch Road, the lot was illegally cleared of nearly all trees, (reconstruction and repair were then mandated by the State of NH), an enormous 6 car garage was built, and a fair amount of the rest of the lot was paved for a long driveway. This has resulted in severe drainage problems on my property due to the substantially increased runoff from the uphill lot.

The subject property lies uphill and directly across the street from my property. If the entrance way for this property is located near the entrance to my property, or if the trees and shrubbery in this area are substantially disturbed, it will dramatically increase the already severe drainage problems of my property, referenced above. I therefore request that any variance to allow proposed construction, entry way, and drainage criteria.

Specifically I request that entry to the property be made perpendicular to the hillside – that is the driveway entrance should be on the side of the hill and not opposite my property. Further I request that there be a 50 foot buffer where the trees and shrubbery are undisturbed adjacent to the road where it faces my property. Finally, I request that there be a reasonable limit to the clearing of trees over the whole of the property so as not to introduce runoff and erosion problems that will ultimately feed water and silt through my property and into Horace Lake.

I respectfully make these requests in earnest and for the benefit of all, and I otherwise wish the abutter success in creating a desirable living space.

Sincerely,

William D. Lindsay  
27 Wallace Brook Road  
Brookline, NH 03033  
603-673-9448”

Public At Large: NONE

Other Boards: NONE

Rebuttal of applicant: NONE

Being there were no further comments or questions, Chairman Galvin closed this hearing at 7:55 PM.

Case #1104 Edward Palmer (Owner: Horace Palmer)  
Special Exception, Article 24, Section 24.8  
Applicant is requesting permission to allow parking within the setback.  
Tax Map 411-102 South Stark Highway

Chairman Galvin opened this hearing at 7:56 PM. Leon Methot made a motion to continue this hearing to the meeting after the Planning Board reviews this for a

site plan review, June Purington seconded the motion. Discussion: The board discussed whether or not the applicant needed to be here or not. Vote: 4 in favor, 1 opposed, therefore motion passes.

Being there were no further comments or questions, Chairman Galvin closed this hearing at 8:20 PM.

Case #1204 John M. Esdale

Variance, Article 18, Section 18.2.2

Applicant is requesting permission to build a farmers porch 2 feet into the setback.

Tax Map 402-079.006 58 Hatfield Road

Chairman Galvin opened this hearing at 8:21 PM. Chairman Galvin moved to accept the application as complete; Leon Methot seconded the motion, all in favor. John Esdale was present for this hearing. Mr. Esdale explained that he would like to build a 6' farmers porch onto his existing home. Mr. Esdale went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: other properties in the area have farmers' porches on them and I don't believe that the addition would decrease the value of the surrounding properties.
2. That the granting of the variance **will not** be contrary to the public interest because: no adverse effect on the public interest has been identified or is anticipated.
3. That the enforcement of the zoning ordinance **will** create an unnecessary hardship in that the zoning restriction:
  - a. As applied to the petitioner's property will interfere with the petitioner's use of their property, considering the unique setting of the property in its environment for the following reasons: a farmer's porch is a reasonable use for the lot considering the setting, the encroachment into the setback is 2' leaving 48' to the property line.
  - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: the front of the house is a reasonable location for a farmer's porch, which currently sits only 54 feet from the front property line. The 6' farmer's porch would interfere with 2' of the setback.
  - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: no public or private rights have been identified which this request would interfere with, and none are anticipated.
4. That by the granting of this variance, substantial justice **will be** done because: a reasonable expectation is the ability to build a farmer's porch on this lot. A 4' farmer's porch could be built but that allows no room for walking in front of any type of furniture that might be on the porch.

5. That the use contemplated by the petitioner as a result of obtaining this variance **will not** be contrary to the spirit of the ordinance because: there is nothing in the spirit and intent of the zoning ordinance which this porch would be contrary to.

Approving abutters: NONE

Disapproving abutters: NONE

Public at Large: NONE

Other boards: NONE

Being there was not further comments; Chairman Galvin closed this hearing at 8:37 PM.

#### **IV. CASE DECISIONS:**

Case #0604 Riverview Realty Trust (Continued Hearing)

Variance, Article 17, Section 17.1.1

Applicant is requesting permission to permit construction of up to a 4 bedroom single family home.

Tax Map 107-014

Branch Road (Private Road)

Pointe #1: Leon Methot moved to accept point #1, Jack Dearborn seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, Esenwine). Point #2: Leon Methot moved to accept point #2, Jack Dearborn seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, Esenwine). Points #3a, 3b, 3c: Jack Dearborn moved to accept points #3a, 3b & 3c, June Purington seconded the motion. Discussion: Forrest Esenwine stated that he is concerned with our ordinance. We've made exceptions and that somewhere along the line, our ordinance says one thing and we seem to find ways around. Even though there are already existing homes there by adding another home shouldn't be allowed because the ordinance says no. Vote: 4 in favor (Methot, Purington, Dearborn, Galvin) and 1 opposed (Esenwine), therefore motion passes. Point #4: June Purington moved to accept point #4, Leon Methot seconded the motion. Discussion: Forrest Esenwine stated that the point made is exactly what he is getting at, with regard to precedence. Vote: 4 in favor (Methot, Purington, Dearborn, Galvin) and 1 opposed (Esenwine). Point #5: Leon Methot moved, June Purington seconded the motion, 4 in favor (Methot, Purington, Dearborn, Galvin) and 1 opposed (Esenwine). Leon Methot moved to grant the variance with the following conditions:

1. Branch Road must be upgraded to a state that the Public Works Director and Fire Chief believe is safe for passage of emergency vehicles and vehicular traffic.
2. The road improvements must be done and approved in writing by the Public Works Director prior to the building permit being issued.
3. The road improvements must also be inspected and approved in writing by the Public Works Director prior to any occupancy permit being issued.
4. Town of Weare liability disclaimer to be attached to the building lots deed and be recorded at the Hillsborough County Registry of Deeds as part of the deed, approved by Town Counsel.
5. A Private Road sign to be posted at the entrance of Branch Road.

Jack Dearborn seconded the motion. Vote: 4 in favor (Methot, Purington, Dearborn, Galvin) and 1 opposed (Esenwine), therefore variance is granted with conditions.

Case #1204 John M. Esdale  
Variance, Article 18, Section 18.2.2  
Applicant is requesting permission to build a farmers porch 2 feet into the setback.  
Tax Map 402-079.006 58 Hatfield Road

Point #1: Leon Methot moved to accept point #1, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, Esenwine). Point #2: June Purington moved to accept point #2, Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, Esenwine). Points 3a, 3b, 3c: Leon Methot moved to accept points #3a, 3b & 3c, Jack Dearborn seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, Esenwine). Point #4: Jack Dearborn moved to accept point #4, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, Esenwine). Point #5: Jack Dearborn moved to accept point #5, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, Esenwine). Jack Dearborn moved to grant Case #1204 with the condition that the farmer's porch is to be no closer than 48 feet from the front property line, Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Dearborn, Galvin, Esenwine).

## **V. OTHER BUSINESS:**

LETTER FROM CEO REGARDING COLLINS LANDING: Chairman Galvin wanted to publicly make the residents aware that there was further action taken from the result of the May decision of case #0904. On May 19, 2004 the zoning board made a lengthy decision regarding the permit that was issued for a 5 unit building at Collins Landing. The Town has taken the position that Collins Landing must cease and desist this construction until they either modify the plan or present applications to construct in accordance with the recorded plan. The CEO sent a letter to Mr. Pelletier to cease and desist the construction of the building but it did allow him to make the structure weather tight to protect the already started building.

JUNE 30<sup>TH</sup> BUDGET SUMMIT: Chairman Galvin informed the board that he received an invite from the Board of Selectmen to attend a budget summit on Wednesday, June 30, 2004. The purpose of this meeting was to try to get all boards to work together in hopes of getting a budget passed for the upcoming year. This meeting will be held in the Sawyer Room at the Library and everyone available is invited to attend.

MAY 4, 2004 MINUTES: Forrest Esenwine moved to approve the May 4, 2004 minutes as amended, Leon Methot seconded the motion, all in favor.

MAY 10, 2004 MINUTES: Forrest Esenwine moved to approve the May 10, 2004 minutes as written, Leon Methot seconded the motion, all in favor.

MAY 19, 2004 MINUTES: Forrest Esenwine moved to approve the May 19, 2004 minutes as amended, Leon Methot seconded the motion, all in favor.

CHECKLIST DISCUSSION: Changes were made in the checklist in an effort to try to reduce the backlog and get people to bring in the correct information to be put on the agenda. Also, to let people know what is expected of all applicants.

VARIANCE: The board then reviewed the ordinance as to where it says that all 5 points of a variance as well as the seven conditions of a special exception must be addressed individually, because there seems to be some confusion.

JULY MEETING: The board has set the date for July meeting as July 13<sup>th</sup>.

**VI. ADJOURNMENT:**

As there was no further business to come before the board, June Purington moved to adjourn at 9:00 PM, Leon Methot seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton  
Land Use Coordinator